Bail Slip

Accused Viz., Sivalingam was directed to be released on bail as per the order of this Court dated 23.8.98 and made in Crl.M.P.No.7348 of 1999 in C.A.No.668 of 1999 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.06.2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRIMINAL APPEAL No.668 OF 1999

Sivalingam ... Appellant

Vs.

State represented by
Inspector of Police,
Tiruvannamalai Protection of Civil Rights
Police Station,
Tiruvannamalai. ... Respondent

Appeal under Section 374 of Crl.P.C against the conviction and sentence imposed by the Principal Sessions Judge, Tiruvannamalai, in S.C.No.88 of 1998 dated 13.08.1999.

For Appellant - Mr.Gopinath,
Senior Counsel for
M/s. N.S. Nappinai

For Respondent - Mr.N.Kumanan
Govt. Advocate (Crl.Side)

O R D E R

The accused has filed the Appeal against the order of conviction for the alleged offence under Section 3(1)(10) of the S.C./S.T.(Prevention of Atrocities) Act, by the learned Principal Sessions Judge, Tiruvannamalai, who imposed a sentence of three years Rigorous Imprisonment and fine of Rs.1,000/-, in default, six months Rigorous Imprisonment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The brief facts of the prosecution case are as follows:-

(i) P.W.1 is residing at Ambedkar Nagar, Tiruvannamalai. He belongs to Scheduled Caste. P.Ws.2, 3 and 4 are residing at Vada Aundapattu Village. P.W.2 belongs to Naidu community and P.Ws.3 and 4 belong to Vanniyar community. The accused belongs to Vanniyar Community. P.W.1 owns a land at Vada Aundapattu Village, near which the accused has also got a land.

(ii) On 11.04.1998, at about 5.00 p.m., P.W.1 raised Groundnut grains in his field and P.Ws.2, 3 and 4 and one Murugan were working in the field of P.W.1. P.W.1 was standing on the edge of the field. At that time, the accused came there and abused P.W.1 with filthy language, mentioning about his caste. P.W.1 felt humiliated at the act of the accused. He spoke to P.Ws.2,3 and 4 telling them that he want to lodge a complaint against the accused. But they consoled him saying that they will enquire the accused and take a proper decision. But the accused was never enquired by the Villagers. Therefore, P.W.1 preferred a complaint before the Protection of Civil Rights Police Station on 25.05.1998, at 2.00 p.m. P.W.6, the Sub-Inspector of Police received the complaint and registered a case in Crime No.4 of 1998, for the offence under Section 3(1)(10) of S.C./S.T.(Prevention of Atrocities) Act and prepared a printed First Information Report and sent the same to the Court and other officials. P.W.7, Deputy Superintendent of Police took up the case for investigation, went to the place of occurrence on 18.08.1998 and prepared Ex.P.5, rough sketch and examined P.Ws.1 to 4 for recording their statement. On 29.08.1998, at about 3.00 p.m., he arrested the accused at Tiruvannamalai Corporation Bus Stop and sent him for judicial custody. On 01.09.1998, he received Ex.P.2, Community Certificate for P.W.2 and Ex.P3, Community Certificate for the accused. On completion of the investigation on 14.10.1998, he filed final report against the accused for the alleged offence as stated supra.

3. Before the Trial Court, on behalf of the prosecution, P.Ws.1 to 7 were examined and Exs.P1 to P5 were marked. On behalf of the accused, no witnesses were examined and no documents were marked. When the accused was questioned under Section 3(1)(10), S.C./S.T.(Prevention of Atrocities) Act, incriminating circumstance appeared in the evidence of the prosecution witness. The accused denied the same that the offence alleged against him is false. On consideration of the oral and documentary evidence, the learned Principal Sessions Judge, Tiruvannamalai came to the conclusion that the offence alleged against the accused under Section 3(1)(10) of the S.C./S.T.(Prevention of Atrocities) Act is proved and therefore convicted him with three years Rigorous Imprisonment with a fine of Rs.1,000/-, in default, six months Rigorous Imprisonment. Hence, this Appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. Mr.Gopinath, learned Senior Counsel appearing for the appellant would contend that the case has been directly taken from the Sessions Court and was never committed by the learned Magistrate. Therefore, the whole proceedings are vitiated. A perusal of the judgment would show that there is no mention that the case was admitted by any Magistrate. A clarification was sought for from the learned Principal Sessions Judge in his report. But in his report dated 27.06.2006, he has stated that after the receipt of the circular P.DIS.No.44/2000 sent by the High Court, a case registered under S.C/S.T. (Prevention of Atrocities Act) was taken directly without committal. The case was taken cognizance only after the committal. The judgment of this case was delivered on 13.08.1999 and it is clear that the case was not committed by any Magistrate and cognizance was taken by the Sessions Court directly.

5. In 2000 SCC (Crl) 488 (Gangula Ashok and Another Vs. State of A.P.), the Honourable Supreme Court has held as follows :

> "Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the Section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. As such the charge-sheet or complaint cannot straight away be filed before such Special Court for offences under the Act. It can be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Sessions from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session."

6. In 2001-2 L.W.(Crl) 755 (Mani Vs. State by Sub Inspector of Police,Kangeyam), learned Judge, N.Dinakar has held as follows :

"In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate and neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Sessions (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. As such the charge sheet or complaint cannot straight away be filed before such Special Court for offences under the Act and it can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

In view of the law enunciated by the Supreme Court the cognizance taken by the learned Sessions Judge and the subsequent trial are vitiated. Therefore, the conviction of the appellant cannot be maintained and it has to be set aside, since the learned Sessions Judge acted without jurisdiction on account of the absence of an order of committal, when he took cognizance. Therefore, the conviction of the appellant under Section 324 I.P.C. is set aside."

WEB COPY

7. In 2003 L.W. (Crl.) 914 (N.Palanisamy and 2 others Vs. State by Inspector of Police, Trichy), learned Judge, A.K.Rajan has held as follows :

"In the absence of committal, the entire proceedings of the Sessions Judge is invalid."

https://hcservices.ecourts.gov.in/hcservices/

8. Following the judgment cited above by the Honourable Supreme Court and our High Court, this case also is set aside, since the entire proceedings that took place before the learned Sessions Judge is invalid. Hence, the appeal is allowed. The conviction is set aside.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

abe

To

1. The Inspector of Police,
State of Tamilnadu,
Tiruvannamalai Protection of Civil Rights
Police Station,
Tiruvannamalai.

2. The Principal Sessions Judge,
Tiruvannamalai

3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.L. Mahendran, Advocate, sr. 28397

CRL.A.No.668 of 1999

MKJ (CO)
kk 25/7

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/